JUDGE SULLIVAN

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

12 CV 4408

Index No.:

---X

YADIRA TORRES

Plaintiff,

-against-

RR DONNELLEY FINANCIAL, INC., and
JOHN HILI, individually,

Defendants.

---X

COMPLAINT

Plaintiff Demands a Trial By Jury

RECEIVED JUN 05 2012 U.S.D.C. S.D. N.Y. CASHIERS

Plaintiff, YADIRA TORRES, by her attorneys, the Arcé Law Group PC, upon information and belief, complains of Defendants as follows:

NATURE OF THE CASE

1. Plaintiff complains pursuant to the laws of the Administrative Code of the City of New York and the laws of the State of New York; based upon the supplemental jurisdiction of this Court pursuant to Gibb, 38 U.S. 715 (1966) and 28 U.S.C. §1367, seeking damages to redress the injuries Plaintiff has suffered as a result of being harassed and discriminated against by her former employer on the basis of her sex/gender together with sexual harassment, and retaliation.

JURISDICTION

2. This Court has jurisdiction over this matter pursuant to 28 USC 1332 in that there is complete diversity of citizenship and the matter in controversy exceeds, exclusive of interest and costs, the sum of $75,000.00.

3. Venue is proper in this district based upon the fact that a substantial part of the events or omissions giving rise to the claim occurred within the Southern District of the State of New York. 28 U.S.C. §1391(b).

PARTIES

4. Plaintiff is a resident of the State of New Jersey, County of Essex.
5. At all times material, Defendant RR DONNELLEY FINANCIAL, INC. (herein also referred to as "RR DONNELLEY") was and is a foreign business corporation duly incorporated under the laws of the State of Delaware.
6. At all times material, Defendant RR DONNELLEY was and is a foreign business corporation authorized to do business in the State of New York.
7. At all times material, Defendant RR DONNELLEY was and is a foreign business corporation that does conduct business in the State of New York.
8. At all times material, Defendant JOHN HILI (herein also referred to as "HILI") was and is a resident of the State of New York.
9. At all times material, Defendant HILI was and is an employee of Defendant RR DONNELLEY.
10. At all times material, Defendant HILI was Plaintiff's supervisor and/or had supervisory authority over Plaintiff.
11. Defendant RR DONNELLEY and Defendant HILI are herein collectively referred to as "Defendants."
12. At all times material, Plaintiff was an employee of Defendants.

MATERIAL FACTS

13. In or around March 2005, Plaintiff began her employment with Defendants as a "Sales Assistant."

14. In or around February 2010, Plaintiff was promoted to a "Customer Service Representative."

15. Beginning in or around 2010 and continuing until Plaintiff's termination on February 23, 2012, Defendant HILI consistently spoke about sexual subjects in the work place with other male employees.

16. By way of example, Defendant HILI discussed dating strippers with other male employees and said, in front of Plaintiff and other employees, **"Would you date a nice girl that is a 5 or rather a 10 but she's a stripper?"**

17. Defendant HILI and the other male employees consistently referred to women as "bitches" in front of Plaintiff and other employees.

18. Defendant HILI and the other male employees frequently looked at women's pictures on Facebook and other websites and would comment on what they looked like in front of Plaintiff and other employees. .

19. Plaintiff felt extremely uncomfortable when Defendant HILI would talk about sex in front of her and other employees.

20. Even though Plaintiff and other employees felt uncomfortable about the sexual talk and would turn away, Defendant HILI would say **"I don't care. Do you know how many times I've been reported to HR and nothing has been done."**

21. Defendant HILI said this in order to coerce, intimidate and dissuade Plaintiff from exercising her protected rights.

22. Defendant HILI said this in order to make Plaintiff believe that it would be futile to file a complaint.

23. In or around July 2011, Plaintiff noticed Gilbert Jibaja, one of Defendants' employees, place both hands on another female employee, Alyssa Lance's, shoulders when talking to her.

24. Plaintiff asked Alyssa Lance is everything was okay because she (Alyssa Lance) looked uncomfortable. Alyssa Lance responded "Does Gil[bert Jibaja] touch you inappropriately when he talks to you?"

25. Plaintiff told Alyssa to report the incident to Defendant HILI, Manager of Defendants' "Venue Department."

26. Alyssa told Plaintiff "I don't want to yet because I'm new here."

27. After observing the inappropriate touching, that same day, Plaintiff herself reported the inappropriate touching and sexual harassment of Alyssa Lanceto Defendant HILI.

28. Defendant HILI said that he would talk to Alyssa and then subsequently told Alyssa that he would talk to Gilbert. However, Alyssa resigned because she felt so uncomfortable with the sexually hostile work environment.

29. After this incident, Plaintiff noticed Gilbert Jibaja place his hands on other employees' shoulders or hands.

30. On or about September 22, 2011, Plaintiff complained to Defendants' Human Resources Hotline because Gilbert had not been reprimanded for the sexual harassment and he continued to make sexually inappropriate comments to other female employees.

31. On or about September 29, 2011, Plaintiff again complained with a follow up call to the Human Resources Hotline.

32. In or around the middle of October 2011, Defendants' Human Resources Department stated they would be meeting with each employee and Defendant HILI to conduct an investigation. Plaintiff specifically stated that she did not want to meet with Defendant HILI because he was "part of the problem."

33. In or around October 2011, Plaintiff had a meeting with Roseanne Ferrick, the Human Resources Manager, in which Plaintiff complained about Gilbert's previous sexual harassment, Gilbert and Defendant HILI's inappropriate behavior, and the fact that whenever anyone complained to Defendant HILI about the unlawful activities, Defendant HILI did nothing to investigate or remedy the situation.

34. Beginning immediately after Plaintiff's complaints to Human Resources, and continuing until Plaintiff was terminated on February 23, 2012, Defendant HILI began retaliating against Plaintiff.

35. In retaliation for Plaintiff's complaints, Defendant HILI stopped speaking to Plaintiff or acknowledging Plaintiff.

36. In retaliation for Plaintiff's complaints, Gilbert Jibaja began to overly criticize Plaintiff's work on a daily basis. Plaintiff informed Defendant HILI of Gilbert Jibaja's behavior however Defendant HILI failed to take appropriate measures to remedy the situation.

37. In or around November 2011, Plaintiff complained to Benjamin Brown, Defendants' "Project Manager Lead," about the hostile work environment and relentless retaliation.

38. Benjamin Brown told Plaintiff **"You need to play the game and kiss [Defendant HILI's] ass."**

39. On or about February 23, 2012, Defendant HILI terminated Plaintiff under the pretext that she was incorrectly submitting her timesheets and that she was leaving early.

40. Since in or around the beginning of 2010, Defendant HILI told Plaintiff and other employees "I don't care to know what time you leave as long as work flow permits and one of you is here to turn the next shift. If I received any complaints then it will stop." Plaintiff was never addressed on any complaints regarding leaving early.

41. Defendants implemented the timesheet system in or around September 2011 but never provided any formal training.

42. Plaintiff was never told she was submitting any timesheets incorrectly.

43. Plaintiff also said to Defendant HILI "you told me I could leave early if work flow permitted."

44. Defendants' other employees were incorrectly submitting their timesheets and leaving early with authorization but were not terminated.

45. On or about February 23, 2012, Defendants terminated Plaintiff for reporting Gilbert's sexual harassment and inappropriate touching.

46. On or about February 23, 2012, Defendants terminated Plaintiff because she complained about the hostile work environment.

47. Defendants' reason for terminating Plaintiff was pretext to cover their discriminatory animus towards Plaintiff for having complained about Defendants' unlawful practices.

48. Defendants would not have harassed Plaintiff but for her gender/sex.

49. As a result of Defendants' actions, Plaintiff felt extremely humiliated, degraded, victimized, embarrassed, and emotionally distressed.

50. As a result of Defendants' discriminatory and intolerable treatment of Plaintiff, she has suffered severe emotional distress and physical ailments.

51. As a result of the acts and conduct complained of herein, Plaintiff has suffered and will continue to suffer the loss of income, the loss of a salary, bonuses, benefits and other compensation which such employment entails, and Plaintiff has also suffered future pecuniary losses, emotional pain, suffering, inconvenience, loss of enjoyment of life, and other non-pecuniary losses.

52. As Defendant's conduct has been malicious, willful, outrageous, and conducted with full knowledge of the law, Plaintiff demands Punitive Damages as against all Defendants jointly and severally.

AS A FIRST CAUSE OF ACTION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE
DISCRIMINATION

53. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint as if set forth herein more fully at length.

54. The Administrative Code of City of NY § 8-107 [1] provides that "It shall be an unlawful discriminatory practice: "(a) For an employer or an employee or agent thereof, because of the actual or perceived age, race, creed, color, national origin, gender, disability, marital status, sexual orientation or alienage or citizenship status of any person, to refuse to hire or employ or to bar or to discharge from employment such person or to discriminate against such person in compensation or in terms, conditions or privileges of employment."

55. Defendants engaged in an unlawful discriminatory practice in violation of New York City Administrative Code Title 8, §8-107(1)(a) by discharging Plaintiff, creating and maintaining discriminatory working conditions, and otherwise discriminating against the Plaintiff because of her sex/gender, together with sexual harassment.

AS A SECOND CAUSE OF ACTION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE
RETALIATION

56. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

57. The New York City Administrative Code Title 8, §8-107(1)(e) provides that it shall be unlawful discriminatory practice: "For an employer . . . to discharge . . . or otherwise discriminate against any person because such person has opposed any practices forbidden under this chapter. . . "

58. Defendants violated the section cited herein as set forth.

AS A THIRD CAUSE OF ACTION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE
SUPERVISOR LIABILITY

59. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

60. New York City Administrative Code Title 8-107(13) Employer liability for discriminatory conduct by employee, agent or independent contractor.

   (a) An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of any provision of this section other than subdivisions one and two of this section.
   (b) An employer shall be liable for an unlawful discriminatory practice based upon the conduct of an employee or agent which is in violation of subdivision one or two of this section only where:
      (a) the employee or agent exercised managerial or supervisory responsibility; or
      (b) the employer knew of the employee's or agent's discriminatory conduct, and acquiesced in such conduct or failed to take immediate and appropriate corrective action; an employer shall be deemed to have knowledge of an employee's or agent's discriminatory conduct where that conduct was known by another employee or agent who exercised managerial or supervisory responsibility; or

(c) the employer should have known of the employee's or agent's discriminatory conduct and failed to exercise reasonable diligence to prevent such discriminatory conduct.

61. Defendants violated the section cited herein as set forth.

AS A FOURTH CAUSE OF ACTION
UNDER THE NEW YORK CITY ADMINISTRATIVE CODE
INTERFERENCE WITH PROTECTED RIGHTS

62. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

63. New York City Administrative Code Title 8-107(19) Interference with protected rights. It shall be an unlawful discriminatory practice for any person to coerce, intimidate, threaten or interfere with, or attempt to coerce, intimidate, threaten or interfere with, any person in the exercise or enjoyment of, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected pursuant to this section.

64. Defendants violated the section cited herein as set forth.

AS A FIFTH CAUSE OF ACTION
UNDER STATE LAW
DISCRIMINATION

65. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.

66. Executive Law § 296 provides that "1. It shall be an unlawful discriminatory practice: "(a) For an employer or licensing agency, because of an individual's ... sex . . ., to refuse to hire or employ or to bar or to discharge from employment such individual or to discriminate

against such individual in compensation or in terms, conditions or privileges of employment."

67. Defendants engaged in an unlawful discriminatory practice by discriminating against the Plaintiff because of her sex, together with sexual harassment.

68. Plaintiff hereby makes a claim against Defendants under all of the applicable paragraphs of Executive Law Section 296.

AS A SIXTH CAUSE OF ACTION
UNDER STATE LAW
RETALIATION

69. Plaintiff repeats and realleges each and every allegation made in the above paragraphs of this complaint.

70. New York State Executive Law §296(7) provides that it shall be an unlawful discriminatory practice:

> "For any person engaged in any activity to which this section applies to retaliate or discriminate against any person because [s]he has opposed any practices forbidden under this article."

71. Defendants engaged in an unlawful discriminatory practice by discharging, retaliating, and otherwise discriminating against the Plaintiff because of Plaintiff's opposition to the unlawful employment practices of Plaintiff's employer.

AS A SEVENTH CAUSE OF ACTION
UNDER STATE LAW
AIDING AND ABETTING

72. Plaintiff repeats, reiterates and realleges each and every allegation made in the above paragraphs of this Complaint as if more fully set forth herein at length.

73. New York State Executive Law §296(6) provides that it shall be an unlawful discriminatory practice:

> "For any person to aid, abet, incite compel or coerce the doing of any acts forbidden under this article, or attempt to do so."

74. Defendants engaged in an unlawful discriminatory practice in violation of New York State Executive Law §296(6) by aiding, abetting, inciting, compelling and coercing the discriminatory conduct.

WHEREFORE, Plaintiff respectfully requests a judgment against the Defendants:

A. Declaring that the Defendants engaged in unlawful employment practice prohibited by The New York City Administrative Code Title 8, §8-107 et. Seq., and New York Executive Law and that the Defendants harassed and discriminated against Plaintiff on the basis of sex/gender, along with sexual harassment and retaliation;

B. Awarding damages to the Plaintiff, retroactive to the date of his actual discharge, for all lost wages and benefits resulting from Defendants' unlawful employment practices;

C. Awarding Plaintiff compensatory damages for mental, emotional and physical injury, distress, pain and suffering and injury to her reputation;

D. Awarding Plaintiff punitive damages;

E. Awarding Plaintiff attorney's fees, costs, and expenses;

F. Awarding Plaintiff such other and further relief as the Court may deem equitable, just and proper to remedy Defendants' unlawful employment practices.

JURY DEMAND

Plaintiff requests a jury trial on all issues to be tried.

Dated: New York, New York
May 22, 2012

Arcé Law Group, P.C.
Attorneys for Plaintiff

By: ______________________
Adriane S. Eisen, Esq.
30 Broad, Street, 35th Floor
New York, New York 10004
(212) 587-0760